

Message

From: Wirick, Holiday [wirick.holiday@epa.gov]
Sent: 9/28/2021 3:50:56 PM
To: Garcia, Bert [Garcia.Bert@epa.gov]
CC: Todd, Andrew [Todd.Andrew@epa.gov]; Bloom, Judy [Bloom.Judy@epa.gov]
Subject: North Dakota's mercury adoption - Idaho issue summary

Hi Bert, as a follow-up to the email I forwarded to you this morning that we sent to North Dakota on 1/9/2020 regarding the mercury litigation in Idaho, please let me know if you're interested in a brief summary of our conversation (OW and R8) with ND on 1/8/2020.

Also, regarding what happened in Idaho, once EPA had disapproved ID's WQS in 2008, it was obligated to replace them under the CWA. The law gives EPA 90 days to replace the WQS which have not yet been replaced. In 2014/15, National Marine Fisheries Service found ID's Hg criterion does not protect T&E species (after being sued by NWEA).

Following is Region 10's summary of the lawsuit:

"The ID mercury case stems from a 2013 complaint from NWEA composed of several claims against EPA and the Services. The other claims have been settled, but the ID mercury claim is a citizen suit claim under CWA 505(a) where NWEA alleges that EPA failed to perform its nondiscretionary duty under 303(c) to promptly publish and promulgate federal mercury aquatic life criteria for ID after disapproving the state's 2008 revisions (i.e. the state deleted the numeric mercury criteria and replaced it with narrative criteria).

On 7/19/21, the district court of ID ruled that EPA violated its nondiscretionary duty to promptly publish and promulgate mercury criteria for ID. We are in the process of developing a schedule for a remedy that we will share with NWEA in the next few weeks."

Also, FYI here are links to two articles sent by Mario Sengco:

<https://www.reuters.com/legal/litigation/epa-failed-issue-mercury-standards-water-idaho-judge-2021-07-20/>

One of the Plaintiffs (NWEA):

<https://northwestenvironmentaladvocates.org/2021/07/20/epa-must-protect-idaho-salmon/>

<https://www.northwestenvironmentaladvocates.org/2020/10/09/idaho-mercury-rules-need-fixing/>

Thanks,
Holly Wirick
Water Quality Section
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